



GOVERNMENT OF INDIA

Chandigarh Administration Gazette

Published by Authority

NO. 135]

CHANDIGARH, MONDAY, OCTOBER 31, 2022 (KARTIKA 09, 1944 SAKA)

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 3rd October, 2022

No. 13/1/9892-HII(2)-2022/14551.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 79/2020 dated 13.08.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, U.T., Chandigarh between :

RAJINDER SINGH, H. NO. 325, B-BLOCK, ADARSH NAGAR, NAYAGAON,
DISTRICT MOHALI (Workman)

AND

BAJAJ TRAVELS LIMITED, SCO NO.96-97, SECTOR 17-C, CHANDIGARH THROUGH
ITS MANAGING DIRECTOR. (Management)

AWARD

1. Rajinder Singh, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman was appointed by the management about 22 years back to collect funds from the customer and marketing. The workman remained in continuous and uninterrupted employment up to 31st May, 2020 when his services were illegally and wrongly terminated by refusing of work. The workman was drawing ₹ 13,820/-per month as wages at the time of termination. On 01.06.2020 the workman went to attend his normal duty but he was refused work by the management without assigning any reason and notice. Refusal of work amounts to termination, which is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25-F of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. For his reinstatement the workman served upon the management a demand notice dated 12.06.2020. The management neither denied the contents of the demand notice nor took the workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention in to the matter. The Conciliation Officer intervened but the management refused to take the workman back on duty. Termination is illegal, wrong, motivated, against the principles of natural justice. Prayer is made that the workman may be reinstated with continuity of service, full back wages as the workman remained unemployed during the period i.e. from the date of termination till date and without any changes in service condition and with full attendant benefits.

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2. On notice, the management appeared through its authorized representative and contested the claim application by filing written statement on 16.04.2021, wherein preliminary objections are raised on the ground that the claim statement is not maintainable in the present forum. The workman is not entitled for any back wages as he is already gainfully employed. The claim statement is not covered under the ID Act so the workman has no locus standi to seek the relief under the ID Act.

3. On merits, it is stated that the workman did not continuously worked with the management till 31st May 2020. The workman was habitual to absent from the job in routine and he himself declined to continue his job with the management. The management never terminated the workman. The workman never approached the management rather the true facts has been concealed by the workman and he cooked up a false story. The workman himself left the job. The management has not violated any terms or conditions falling under the ID Act. No demand notice has been served upon the management. However, the management received a notice from the Labour Inspector, Grade - II, U.T. Chandigarh in the month of June 2020 and when the management appeared before the Labour Inspector and submitted the submissions, the workman himself withdraw his complaint and filed this present claim statement only with a view to extract huge money from the management. The workman is making false allegation against the management. The workman is not entitled for any relief claimed by him in the present claim statement. Prayer is made that the present claim statement may be dismissed.

4. The workman filed replication, wherein the contents of written statement are denied as wrong except the admitted facts of the claim and the averments of the statement of claim are reiterated.

5. From the pleadings of the parties, following issues were framed *vide* order dated 12.08.2021:—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

6. The workman examined himself as AW1 and tendered into evidence his affidavit Exhibit 'AW1/A'.

7. During the pendency of the present industrial dispute, the parties settled their dispute. On 03.08.2022 learned representative for the workman made the statement, which was recorded separately and reproduced as below :—

"Stated that parties have settled their dispute. The compromise dated 19.04.2022 is reduced into writing which is Exhibit C-1. The workman received Rs. 1,70,000/ (Rs. One Lac Seventy Thousand only) towards full and final settlement in lieu of compromise. It may be disposed off being compromised in the Lok Adalat."

8. Thereafter the dispute was referred to the National Lok Adalat held on 13.08.2022. Heard. In view of the above statement of learned representative for the workman, the present industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

Dated 13th August, 2022.

(Sd.) . . . ,
(JAGDEEP KAUR VIRK),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 3rd October, 2022

No. 13/1/9893-HII(2)-2022/14553.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 12/2021 dated 13.08.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, U.T., Chandigarh between :

SANT BAHADUR S/O SHRI PREM BAHADUR R/O 1850, NEAR SAINI GURUDAWARA
VILLAGE BURAIL, UNION TERRITORY CHANDIGARH (Workman)

AND

K. C. RESIDENCY, THROUGH ITS PROPRIETOR / OCCUPIER, SCO NO.377-380,
SECTOR 35, U.T. CHANDIGARH. (Management)

AWARD

1. Sant Bahadur, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman was appointed as Cook by the hotel management with effect from 09.04.2012. The wages of the workman were fixed ₹ 9,095/- per month and he was getting his wages after deduction of ESI and PF. The hotel management was entirely satisfied with his work and conduct. The appointment process and service conditions were not according to law. The hotel management was not providing fourteen days sick leave with wages, seven days casual leave, 15 days earned leaves with wages annually to the workman according to "The Punjab Industrial Establishment National and Festival Holidays and Casual and Sick Leaves Act, 1965. By this way the hotel management illegally deducted the wages of the workman. The hotel management did not issue leave cards and paid bonus according to the Payment of Bonus Act. The workman is a permanent and regular employee and availed only sanctioned leave so his services are uninterrupted and continuous with the hotel management according to provisions of Section 25-B of the ID Act. The hotel management refused to allow duty to the workman on 12.06.2018. The hotel management had not issued any memo, charge sheet nor conducted any inquiry in any matter before termination. The workman after illegal termination is facing all difficulty of unemployed person and his family is at the stage of starvation due to illegal act and conduct of the hotel management. Before submission of demand notice, the workman had submitted a written complaint against the illegal termination before the Area Labour Inspector, Chandigarh wherein the management appeared before the Area Labour Inspector and agreed to reinstate the workman on duty. As per settlement, the workman submitted written joining report dated 10.08.2018 to the hotel management but Shri Tilak Raj, Cashier of hotel management refused to reinstate the workman on duty and to take joining report. The workman also sent joining report to the hotel management through registered post *vide* receipt dated 10.08.2018. During the conciliation proceedings before the Assistant Labour Commissioner, Chandigarh, the management had issued show cause notice dated 19.09.2018 to the workman for joining alleged inquiry before the Inquiry Officer. The workman sent written reply dated 26.09.2018 to the management that before starting inquiry he may be supplied the copy of charge sheet and proceedings. The hotel management have not paid or offered notice pay in lieu of notice or compensation to the workman. Job of the workman exists as it is till date and the workmen junior to the workman are still retained in service by the hotel management. There is serious violation of Section 25-F, 25-G and 25-H of the ID Act. At the time of termination, the hotel management has neither offered nor paid any type of financial benefits nor assured re-employment to the workman. Prayer is made that termination order may be declared illegal and the workman be reinstated into service with continuity of service, full back wages and all other applicable consequential benefits.

2. On notice, the management appeared through its authorized representative and contested the statement of claim by filing written statement on 02.09.2021, wherein preliminary objections are raised on the ground that the statement of claim is beyond the terms of reference and assertions contained in the demand notice. The date of termination, as alleged by the workman, does not exist as he was terminated from service on 29.08.2019 whereas he has alleged termination of services on 12.06.2019. The workman was charge sheeted *vide* charge sheet dated 04.07.2018 for serious acts of misconduct of remaining absent from duty for a long time. The conciliation proceedings failed on 13.08.2019 but he kept silent for one year and 5 months and has not filed application under Section 2-A(2) of the ID Act on 18.01.2021. The workman has not explained this delay. It is learnt that the workman had shifted to Mumbai for serving another employer and later returned to Chandigarh and filed the present case. As such the claim application is bad in law and not maintainable on the grounds of delay and laches.

3. On merits, it is admitted that the workman was employed with the management as Cook and his last drawn wages were ₹ 9,095/-. It is stated that the workman joined on 01.06.2013 with the management. The workman was a habitual offender and absentee as he often overstayed leave. The management has been implementing Labour Laws in letter and spirit. The workman absented from duty with effect from 29.05.2018 and did not report for duty thereafter despite several letters by the management at his last known and recorded address. The workman was charge sheeted on 04.07.2018 and was given ample opportunity for replying the charge sheet but he did not reply the same. Thus, he is estopped to raise any objection at this stage. The Inquiry Officer was appointed waiting for the reply of the workman to the charge sheet. The workman was afforded full opportunity to defend himself in the inquiry but he never joined the inquiry despite publication of notice in the newspaper by the Inquiry officer. The Inquiry Officer gave a reasonable opportunity of defence to the workman and has acted in an impartial manner. The Inquiry Officer gave his report after the conclusion of inquiry and found the workman guilty of charges. The report of the Inquiry Officer was supplied to the workman along with show cause notice of proposed penalty. The workman did not file any comments on the inquiry report as well as did not reply to the show cause notice. Thus, his services were terminated on 29.08.2019 on the basis of proved charges of misconduct. The management appeared before the Conciliation Officer and filed its reply. The Conciliation Officer was apprised of the inquiry being conducted against the workman and inquiry report was also placed before him on his directions. No notice pay was payable in the facts and circumstances of the case nor the provisions of Section 24-F, 25-G & 25-H of the ID Act are attracted. The order of termination dated 29.08.2019 has never been challenged by the workman and the present demand notice and claim are premature. The workman was aware of inquiry proceedings being held against him and as such he is not entitled to impugn the termination order. Remaining averments of the claim statement are denied being wrong. Prayer is made that the demand notice, order of reference and claim of the workman may be dismissed.

4. The workman filed replication, wherein the contents of written statement are denied as wrong except the admitted facts of the statement of claim and the averments of the statement of claim are reiterated.

5. From the pleadings of the parties, following issues were framed *vide* order dated 06.01.2022 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the claim of the workman is not maintainable on the ground of delay and laches ? OPM
3. Relief.

6. The workman examined himself as AW1 and tendered into evidence his sworn in affidavit Exhibit 'AW1/A'.

7. During the pendency of the present industrial dispute, the dispute was referred for determination to the National Lok Adalat held on 13.08.2022 and the parties have settled their dispute.

On 13.08.2022, learned representative for the management made a statement, which was recorded separately and reproduced as below :—

"Stated that the management has agreed to pay Rs.40,000/- to the workman towards full & final payment of dues of the workman including right of reinstatement or re-employment, within ten days from today."

On the other hand, on 13.08.2022 the workman made a statement, which was recorded separately and reproduced as below :—

"Stated that I have heard the statement of ld. rep. for the management, recorded today in the court and I agreed with the same. In view of the statement made by ld. rep. for the management, after receipt of the compromise amount, all my claims including right of reinstatement, gratuity and other dues under the labour laws shall stands satisfied. The present industrial dispute may be disposed off accordingly."

8. Heard. In view of the above statements, the present industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

Dated 13th August, 2022.

(JAGDEEP KAUR VIRK),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 3rd October, 2022

No. 13/1/9895-HII(2)-2022/14555.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 110/2018 dated 13.08.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, U.T., Chandigarh between :

PARVEEN KUMAR BHATIA S/O SHRI KESHAV RAM R/O HOUSE NO.3378,
MAULI COMPLEX, CHANDIGARH (Workman)

AND

1. GROZ-BECKERT ASIA PRIVATE LIMITED, 133-135, PHASE - I, INDUSTRIAL AREA, CHANDIGARH THROUGH ITS FACTORY MANAGER.
2. HAWKS EYE SECURITY SERVICES PRIVATE LIMITED, S.C.O. NO.181-182, 1ST FLOOR, SECTOR 8-C, CHANDIGARH THROUGH ITS AUTHORISED SIGNATORY (Management)

AWARD

1. Parveen Kumar Bhatia, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*) wherein it is averred that the workman was appointed as Helper on 16.08.2005 by management No.1 and was assigned the work of hand straightening of knitting needles to improve straightness quality in Hand Straightening Department. The interview was conducted by its then Factory Manager namely Shri Manmohan Singh Dhaliwal. The workman was given token No.11

at the time of his removal. It was informed to the workman that he would be deputed on regular work of the factory and his employment would be regular, though on papers it would be through contractor namely Hawks Eye Security Services Private Limited i.e. management No.2. The daily timing of the workman was from 8:30 to 5:00 P.M. with weekly off. The work of the workman was controlled, supervised and assessed by management No.1's engineer namely Shri Satish Sharma. During some period, the work of the workman was controlled, supervised and assessed by its other engineer namely Shri Lalit Mohan Kalia. The personal file, record of leaves etc. of the workman was maintained by its Human Resource Department. The workman was being paid ₹ 15,500/- as gross salary including incentives & allowances and after deduction of provident fund, ESI and diet deduction, the workman was receiving salary of about ₹ 10,441/- per month at the time of his removal which was paid by management No.1 through contractor. Management No.1 has paid ₹ 1,200/- on 18.10.2017 as Diwali festival sweets and have also paid ₹ 3,000/- in 2010 while celebrating its Golden Jubilee celebration. The workman was also enjoying yearly increment given by management No.1. The workman had not been given his salary of May 2018 on time and the same was paid on 06.07.2018 after filing of demand notice. The work & conduct of the workman while in service was unblemished and satisfactory. On 29.05.2018 the workman was called by Human Resource Officer of management No.1 namely Shri Ajay Patial, who directed the workman not to come on duty from the next day and forced him to sign on some blank papers but the workman refused for the same. The employees junior to the workman have been retained in service by the management in violation of provisions of law. The hand straightening process is still going on as the process is very crucial and is a regular work of the factory of management No.1. While terminating the services of the workman, neither prior notice was issued to the workman nor he was paid wages in lieu of notice period. The nature of work being done by the workman is regular process of manufacturing and quality improvement and without process of hand straightening, the product of management No.1 can neither be packed nor sold into the market. The workman had served in the factory of management No.1 for continuous period from 16.08.2005 to 29.05.2018 and had completed 240 days in the twelve calendar months preceding his termination. Previously, the workman has submitted demand notice dated 08.06.2018 to the managements and before the Assistant Labour Commissioner-cum-Conciliation Officer, Sector 30, Chandigarh and both the managements submitted its reply dated 24.07.2018 and 05.10.2018 respectively. The conciliation proceedings failed and accordingly, the Conciliation Officer *vide* Memo No.6827 dated 12.10.2018 advised the workman to refer Section 2-A of the Industrial Disputes (Amendment) Act, 2010 and accordingly this statement of claim. During the pendency of the above conciliation proceedings, management No.2 to create illusion and false bonafide sent an ante dated letter dated 06.06.2018 actually sent on 13.06.2018 falsely stating that the Hand Straightening unit is closed at management No.1 factory. When the workman contacted management No.2, he was asked to work at some other place at salary of ₹ 9,000/-, which was much lower than his last paid salary of ₹ 15,500/-. The workman had made it clear to management No.2 that he is entitled to the same wages as he was last paid and would not work for lesser amount. Prayer is made that an order may be issued to the managements to reinstate the service of the workman with continuity of service along with all the benefits under the provisions of law including full back wages.

2. On notice, management No.1 i.e. M/s Groz-Beckert Asia Private Limited appeared through its authorized representative and contested the statement of claim by filing written statement on 07.06.2019, wherein preliminary objections are raised on the ground that the claimant/person concerned was never in the employment of management No. 1. There was no privity of contract between the concerned person and management No.1 as such no employer-employee relationship ever existed between them. The concerned person was employee of respondent No.2 (contractor), who is a licensed contractor under the Contract Labour (Regulation & Abolition) Act, 1970. The concerned person was getting his monthly wages from management No.2. Management No.2 is covered under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 and Employees State Insurance Act, 1948. The concerned person is also covered under EPF and ESI Codes of management No. 2. Management No.1 had no role to play in the engagement and termination of services of the concerned person. The concerned person used to work as per instructions of Supervisor / Assistant Supervisor of management No.2 and his work & conduct was also supervised and controlled by management No.2. The services of the person concerned were regulated by the contractor in accordance with the provisions of the Contract Labour (Regulation & Abolition), Act, 1970 and Rules thereunder and not under the ID Act. Therefore, the concerned person has the remedy to file a claim under the Contract Labour

(Regulation & Abolition), Act, 1970 and Rules thereunder but not under the ID Act. The services of the claimant / concerned person were not required by management No.2 and the concerned person was offered alternate employment by management No.2, which offer was not availed by the person concerned.

3. On merits, it is stated that the concerned person was employee of management No. 2 and he was deployed to work as a Helper in the factory of management No.1 as contract labour. Being a contract labour of management No.2, the workman was not required any training as he was simply to work as a Helper. Since, the work in the Hand Straightening Department was subject to fluctuation, this activity was assigned to the contractor who used to supply contract labour as per requirement from time to time. The work of the workman was controlled, supervised and assessed by the Supervisor / Assistant Supervisor of management No.2. It is the management No. 2, who would confirm the rate of wages paid to the concerned person. Management No.1 has never paid any amount whatsoever directly to the concerned person. The concerned person was getting his monthly wages etc. from management No. 2. The concerned person was never called by Shri Ajay Patial and never directed the workman not to come on duty on the next day and never forced to sign on blank papers. Management No.1 was having surplus manpower and in that situation, management No.1 had two options i.e. to dispense with the services of the surplus permanent manpower or to adjust them in the Hand Straightening Department, which was outsourced to contract labour. Keeping in view the interest of the permanent workers, it was decided to do away with the contract labour so engaged in the Hand Straightening Department so management No.2 was asked to withdraw his contract labour. The Hand Straightening of needles is not perennial in nature. The workman submitted demand notice dated 03.06.2018 for which the conciliation proceeding took place. Management No.1 and management No.2 submitted replies to the demand notice on 24.07.2018 and 05.10.2018 are respectively. The alternate employment was offered to the workman by management No.2 but the same was declined by the workman and consequently, the conciliation proceedings failed. Remaining averments of the claim statement are denied being wrong. Prayer is made that the present claim statement may be dismissed.

4. On notice, management No. 2 i.e. M/s Hawks Eye Security Services Private Limited appeared through its authorized representative and contested the claim of the workman by filing written statement on 11.02.2020, wherein preliminary objections are raised on the ground that management No.2 is an agency that engage workers on contract according to the requirement of the principal employer. The contract of management No.2 with management No.1 is a service contract of temporary nature, based on the volume of work generated by the company. Accordingly, the manpower was recruited on temporary / piece rate basis. Over a period of time, the work generated became lesser and lesser therefore management No.2 had to slowly reduce the manpower according to the work requirements of the principal employer. Since the work requirement reduced with the passage of time and the answering management being concerned about the future of workers, arranged alternate employment for them where it sought to adjust them but the workman did not respond to this gesture and continued on the present job knowing well that the Hand Straightening work was coming to an end in the plant of principal employer. When the answering management started the service contract with management No.1, there were over 100 workers deployed in the work of straightening needles but as the order dwindled and the work reduced, the workers engaged by the answering management also reduced to about 20. Management No.1 ultimately closed the hand straightening work of the needles and the workers including the present one became surplus to the requirement and he was offered alternative employment at other places where the answering management had work requirement but the workman chose not to go there and thus abandoned his employment. The answering management is still ready to offer them employment at other places on similar wages, if possible. The concerned workman is not competent to file the claim statement under the ID Act.

5. On merits, it is pleaded that the workman was a piece rate worker paid by the number of needles he retrieved. He worked in the factory of management No.1. Timings of the workman was from 8:30 A.M. to 5:00 P.M. with weekly off. The workman already paid for the month of May 2018. Since there was no work so the contract of the management automatically came to an end as the same was not renewed by management No. 1. There is no termination of service. None of the provisions of the ID Act are violated. The workman raised a demand notice on 08.06.2018 despite the fact that the work at the plant of management No.1 had ended. The answering management filed its detailed reply before the ALC as well. Other averments of the

statement of claim are denied being wrong. Prayer is made that the workman is not entitled to any relief whatsoever from the answering management and claim of the workman may be dismissed.

6. The workman filed replication to the written statement of management No. 1, wherein the contents of written statement are denied as wrong & except the admitted facts of the statement of claim and the averments of the statement of claim are reiterated.

7. From the pleadings of the parties, following issues were framed *vide* order dated 09.02.2021 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether there exists no employer-employee relationship between management No. 2 and workman ? OPM-2
3. Relief.

8. The workman examined himself as AW1 and tendered into evidence his affidavit Exhibit 'AW1/A' along with documents i.e. letter dated 06.06.2018 issued to the workman by the authorised signatory of M/s Hawks Eye Security Services Private Limited regarding re-location of his services *vide* Exhibit 'AW1/1' and envelop of registered post dated 13.06.2018 cover addressed to the workman *vide* Exhibit 'AW1/2'.

9. During the pendency of the present industrial dispute, the parties negotiated for compromise and on 07.07.2022 Shri Rohit Dogra - General Manager, M/s Hawks Eye Security Services Private Limited made a statement, which was recorded separately and reproduced as below :—

"Stated that on assurance of respondent/management No.1, I have agreed to pay legal dues to applicant/workman within one month from today. I will supply the amount/details of the pending dues to the applicant/workman within 15 days from today."

On the other hand, on 07.07.2022 the workman along with his representative made a statement, which was recorded separately and reproduced as below :—

"Stated that I have heard the statement of Sh. Rohit Dogra, GM got recorded by him today in this court. I agree with the same. After the receipt of the legal dues, I will withdraw the present claim application. The case may be kept pending for awaiting final compromise."

Thereafter the present industrial dispute was referred for determination to the Lok Adalat held on 13.08.2022. The workman got recorded his statement in the Lok Adalat, which is reproduced as below :—

"Stated that I have received agreed payment of my legal dues of Rs.1,00,464/- (Rs. One Lakh Four Hundred Sixty Four only) by way of demand draft No. 082512 dated 08.08.2022 drawn on Union Bank of India towards full & final settlement of my claims and dues including the right of reinstatement, bonus, gratuity, and leave encashment. Photocopy of demand draft is Mark 'C'. Now I have no claim whatsoever against management No. 1 & 2. The present industrial dispute may be disposed off accordingly."

10. Heard. In the view of the above statements, this industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

Dated 13th August, 2022.

(Sd.) . . . ,
(JAGDEEP KAUR VIRK),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 3rd October, 2022

No. 13/1/9373-HII(2)-2022/14557.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR (PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 14/2017, dated 18.08.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, U.T., Chandigarh between :

PRESIDENT GENERAL SECRETARY OF CHANDIGARH TRANSPORT UNDERTAKING
CONDUCTORS UNION (REGD.), CHANDIGARH (Workers' Union)

AND

1. THE DIVISIONAL MANAGER, CHANDIGARH TRANSPORT UNDERTAKING, CHANDIGARH.
2. DIRECTOR TRANSPORT UNION TERRITORY, CHANDIGARH (Management)

referred to the said court by the Chandigarh Administration bearing Endorsement No. 13/1/9373-HII(2)-2017/2163, dated 06.06.2017.

AWARD

1. *Vide* Endorsement No.13/1/9373-HII(2)-2017/12162 Dated 06.06.2017 the Secretary Labour, Chandigarh Administration has referred the dispute to this Court / Tribunal on the demand notice dated 20.09.2016 raised by the Divisional Manager, Chandigarh Transport Undertaking Conductors Union (*hereinafter in short referred "workers' union"*) upon the Divisional Manager, Chandigarh Transport Undertaking, Chandigarh & Another (*hereinafter in short referred "management"*) under Section 2(k) of the Industrial Disputes Act, 1947 (*hereinafter in short referred "ID Act"*) in following words :—

"Whether the demand raised in the demand notice dated 20.09.2016 by President/General Secretary of Chandigarh Transport Undertaking Conductors Union (Regd.), Chandigarh And (i) The Divisional Manager, Chandigarh Transport Undertaking, Chandigarh and Director Transport, Union Territory, Chandigarh, are genuine and justified. If so, to what effect and to what relief the Union / Workers are entitled to, if any ?"

2. Upon notice, the workers' union appeared through its representative Shri D. R. Kaith, who on 17.10.2017 made the statement that the demand notice dated 20.09.2016 may be treated as statement of claim. Accordingly, the demand notice dated was ordered to be treated as statement of claim. Briefly stated the facts of statement of claim are that a meeting of C.T.U. Conductors Union (Regd.) was held on 05.05.2015 wherein it was unanimously decided to file the demand notice to claim the difference of payment of house rent allowance which has become due to the employees of the union by coming into operation the revised pay rules, 2009 w.e.f. 01.01.2006 for the period 01.01.2006 to 30.06.2009. The demand of union has been illegally rejected by the management as per order dated 23.10.2015, therefore Union has decided to file the demand notice and further authorised President and Secretary of the Union to sign the necessary pleadings including demand notice and to engage the services of authorised representative to appear and represent the case on behalf of Union before the Assistant Labour Commissioner, U.T, Chandigarh as well as before the Presiding Officer, Labour Court, U.T, Chandigarh.

3. It is further stated that the Chandigarh Administration adopted the service rules of State of Punjab including Pay Scale and House Rent Allowance (HRA) by framing rules in 1992. The State of Punjab revised pay scale of its employees in the year 2009 which were made applicable w.e.f. 01.01.2006, however, revised HRA dues were made applicable from the date of notification of new rules and till then the employees were getting HRA as per the old rules. Employees were being paid old pay scale till June, 2009. The revised pay rules were made applicable in the year 2009 and till then employees have been getting old pay scale and HRA calculated on the basic of pay scales in old pay scale. With the revision of pay department has revised the pay

scale w.e.f. 01.01.2006 and also paid arrears of difference of pay till the enforcement of revised pay scales. Further, difference of over time has also been paid after order of the Court. In view of the above said facts employees are also entitled for difference of HRA w.e.f 01.01.2016 and the difference of basic pay has also been paid to them, therefore, HRA is also to be calculated and paid as per revised basic pay in the same manner as over time allowance has been paid. In similar manner employees of CTU were being paid over time allowance on the basis of old basic pay for the period w.e.f. 01.01.2006 to 30.06.2009. On revision of pay scale as per Rules 2009 as made applicable w.e.f. 01.01.2006 employees demanded difference of over time allowance as calculated on the basis of revised basic pay w.e.f. 01.01.2006 to 30.06.2009 but request of employees was not accepted. Thereafter, employees approached Labour Court, for getting relief of difference of over time for the period w.e.f. 01.01.2006 to 30.06.2009 on revision of pay scale w.e.f. 01.01.2006 under Section 33(C) (2) of the Industrial Disputes Act, 1947 (*here-in-after in brief referred as ID Act*). The applications were allowed and employees were granted the difference of over time allowance as calculated on the basis of revised basic pay. Department thereafter challenged the order of the Labour Court before the Hon'ble High Court but their Civil Writ Petition and subsequently LPA was also dismissed. Now, the difference of over time allowance for the period 01.01.2006 to 30.06.2009 has been paid to all the employees in compliance with the order of the Labour Court. In similar manner employees of CTU are entitled to difference of HRA. The Union has made several requests to the management but all in vain. Lastly, Union made a detailed reminder to earlier representation dated 27.03.2015 which has been wrongly rejected by the management as per order dated 23.10.2015. Thus, the employees are seeking the difference of arrear of House Rent Allowance which has become due to the employees of union after revision of pay scale along with interest @ 12%p.a.

4. On notice the management contested the statement of claim by filing written reply on dated 15.01.2018 wherein preliminary objections are taken on the ground that the present reference is not maintainable as workers union has no locus-standi. The management is a department of Chandigarh Administration and the pay rules and the pay scales have been revised at par with the State Govt. of Punjab as envisaged vide notification No. 14012/2/88-chd dated 13.01.1992. Besides the present reference is liable to be dismissed on the ground of *Res-judicata* as the matter/issue in question has already been decided by the Hon'ble Central Administrative Tribunal *vide* judgment dated 28.01.2014 in case titled as Chandigarh Govt. Transport Workers Union Chandigarh and Ors. Versus Union of India through the Secretary, Government of India, Ministry of Home Affairs, New Delhi and Ors.

5. Further on merits, the facts that the Chandigarh Administration adopted the service rules of State of Punjab including pay scale and HRA by framing rules in 1992, the State of Punjab revised the pay scale of its employees in the year 2009 which were made applicable w.e.f. 01.01.2006 and the Chandigarh Administration adopted the Punjab rules made applicable w.e.f. 01.01.2006, the revised pay rules were made applicable in the year 2009 and further the fact that with the revision of pay the department has revised the pay scale w.e.f. 01.01.2006 and also paid arrears of difference of pay till the enforcement of the revised pay scales and the fact that the difference of over time has also been paid after the order of the Court are replied being matter of record. It is further stated that the employees are not entitled for the difference of HRA w.e.f. 01.01.2006 to 31.07.2009, otherwise the terms of the notification dated 19.08.2009 are clear whereby it is categorically mentioned that the revision of HRA @ 20% is applicable w.e.f. 01.08.2009 and nowhere it is mentioned that the arrears of HRA is liable to be paid on the revised pay scale. Hence, the arrears of HRA on the revised pay scale were not given to the employee of the U.T, Administration. Admittedly, Chandigarh Administration is bound to follow the pay rules/revision and instructions of the State Govt. of Punjab issued from time to time. In the Punjab State also no arrear of HRA at the revised pay scales is given to the employees of State Govt. of Punjab. In this way employees of CTU are not entitled to get difference/arrears of HRA on the revised pay scale w.e.f. 01.01.2006 to 31.07.2009. It is admitted fact being matter of record that employees of CTU were being paid over time allowance on the unrevised pay scale w.e.f. 01.01.2006 to 30.06.2009. Thereafter, over time allowance have been paid on the revised pay scale for the above stated period in compliance with the court order as the payment of over time allowance is linked with the pay scales which got revised w.e.f. 01.01.2006. However, in respect of HRA, it is categorically mentioned in the order dated 12.08.2009 *vide* which pay scales were revised in the Punjab State (subsequently adopted by U.T, Chandigarh Administration) *vide* letter No. 7000/1/2/F&PO(7)-2009/5618 dated 19.08.2009 that the HRA shall be revised w.e.f. 01.08.2009. This issue has already been decided *vide* order dated 28.01.2014 by the Hon'ble Central Administrative

Tribunal in OA No. 285/CH/2011 captioned as Chandigarh Govt. Transport Workers Union and Ors. Versus Union of India and Ors. whereby the claim of the applicant i.e. Chandigarh Govt. Transport Workers Union was declined in a straight way being not permissible in law and devoid of merit as well which clearly establish that no entitlement to get the arrear w.e.f 01.01.2006 to 31.07.2009 on the revised pay scale is made out. The request of arrears of HRA w.e.f. 01.01.2006 to 31.07.2009 on the revised pay scale is not liable to be acceded to as the State Govt. of Punjab has not granted such type of relief to their employees and the Chandigarh Administration is bound to follow the rules of the Punjab as per notification dated 13.01.1992, whereby it was contemplated that the employees of Chandigarh Administration will be kept at par with the employees of State Govt. of Punjab with regard to pay scale and other allowances etc. Rest of the contents of the statement of claim are denied as wrong and prayed is made that the statement of claim may be dismissed in the interest of natural justice with cost.

6. Replication not filed. From the pleadings of parties following issues were framed *vide* order dated 13.02.2018 :—

1. Whether the reference is bad on account of *res-judicata* ? OPM
2. Whether the demand raised in the demand notice dated 20.09.2016 by the union is genuine & justified, if so, to what effect and to what relief the union / workmen are entitled to, if any ? OPW
3. Relief.

7. In evidence workers union examined AW1 Satinder Singh, Conductor No. 121, CTU Chandigarh who tendered his affidavit Exhibit 'AW1/A' along with documents i.e. photocopy of order dated 04.03.2013 passed by the Presiding Officer, Industrial Tribunal and Labour Court, U.T, Chandigarh in LCA No. 233/2011 to 238/2011 *vide* Exhibit 'W1', copy of order dated 23.09.2014 passed by the Hon'ble High Court in LPA No. 891 of 2014 (O&M) titled as Union Territory Chandigarh and another versus Presiding Officer, Industrial Tribunal & Labour Court, U.T, Chandigarh and another *vide* Exhibit 'W2', photocopy of representation dated 23.07.2015, moved by General Secretary CTU Workers Union Chandigarh to the Transport Secretary, U.T, Chandigarh & Divisional Manager, CTU Chandigarh relating to the subject of demand notice of CTU workers union to grant the difference of House Rent Allowance to all the workers of CTU w.e.f. 01.01.2006 to 30.06.2009 *vide* Exhibit 'W3', photocopy of the reply dated 23.10.2015 to the representation dated 23.07.2015 given by Director Transport Union Territory Chandigarh to the General Secretary CTU Worker's Union Chandigarh *vide* Exhibit 'W4'. The workers union examined AW2 Ranjit Singh, Sr. Asstt., office of General Manager, CTU Chandigarh who brought the summoned record. Testimony of AW2 was recorded in part, his further examination-in-chief was deferred. On 05.01.2022 Id. Representative for Worker's Union got recorded his statement in the court that AW2 summoned witness Sh. Ranjit Singh had expired during the pendency of the present reference and his cross-examination was not concluded due to the reason stated above, therefore, the said witness may be given up. *Vide* order dated 06.01.2022 AW Ranjit Singh was ordered to be given up. The workers Union examined AW3 Ms. Harpreet Kaur, Jr. Asstt. Office of General Manager, CTU, Chandigarh. In cross-examination of MW1 Harpreet Kaur, the workers union brought into evidence document i.e. order of pay fixation relating to Satinder Singh, Conductor No. 121 *vide* Exhibit 'W5'. On 05.01.2022 learned representative for the worker's union closed the evidence on behalf of worker union.

8. On the other hand management examined MW1 Harpreet Kaur, Jr. Asstt. CTU, Chandigarh who tendered her affidavit *vide* Exhibit 'MW1/A', along with documents copy of notification NO. 14012/2/88/CHD dated 13.01.1992 *vide* Exhibit 'MW1/1', copy of order dated 28.01.2014 passed by the Central Administrative Tribunal, Chandigarh Bench in OA No. 285-CH-2011 titled as Chandigarh Govt. Transport Workers Union(Regd. & Recog.) Chandigarh and others versus Union of India and Ors. *vide* Exhibit 'MW1/2', copy of order dated 19.08.2009 whereby Chandigarh Administration adopted the notification dated 13.01.1992 of Govt. of Punjab *vide* Exhibit 'MW1/3'. On 18.08.2022 Id. Law Officer for the management No.1&2 closed their evidence.

9. I have heard the arguments of learned representative for the workers' union and learned Law Officer for the management No.1 & 2 and perused the judicial file. My issue-wise finding are as below :

Issue No. 2 :

10. The issues are overlapping. Therefore, issue No.2 is taken up first. Onus to prove this issue is on the workers' union. Under this issue workers' union examined AW1 Surinder Singh - Conductor No.121, CTU, who tendered his affidavit Exhibit 'AW1/A' and deposed all the material averments of statement of claim. AW1 supported his oral version with documents Exhibit 'W1' to 'W4'.

11. For corroboration workers' union examined AW3 Harpreet Kaur - Junior Assistant, office of General Manager, CTU, Industrial Area, Phase - I, Chandigarh, who deposed that she has brought the summoned record i.e. service book of Shri Satinder Singh - Conductor No.121. As per the record old pay of Satinder Singh w.e.f. 01.01.2006 basic pay ₹ 3,660/- was increased to ₹ 3,780/- w.e.f. 01.01.2008 and further increased to ₹ 4,020/- w.e.f. 01.01.2009. The house rent was paid till the date of revised pay was made applicable w.e.f. 31.12.2005 vide order dated 16.07.2009. The revised pay of Satinder Singh - Conductor as on 01.01.2006 is ₹ 6,870/- plus grade pay ₹ 1,900/- (total ₹ 8,770/-). It was further increased to ₹ 7,140/- plus grade pay ₹ 1,900/- (total ₹ 9,040) w.e.f. 01.01.2008. AW3 voluntarily stated that one increment was stopped therefore no revision was made on 01.01.2007.

12. On the other hand, the management examined MW1 Harpreet Kaur, Junior Assistant, Office of Director Transport and Divisional Manager, U.T. Chandigarh who vide her affidavit Exhibit 'MW1/1' deposed all the material contents of written statement and supported her oral version with documents Exhibit 'MW1/1' to Exhibit 'MW1/3'.

13. From the oral as well as documentary evidence led by the parties, it comes out that admittedly State of Punjab revised pay scale of its employees in the year 2009 made applicable w.e.f. 01.01.2006. As per notification No.14012/2/88-CHD dated 13th January, 1992, published in the Chandigarh Administration Gazette / Exhibit 'MW1/1' condition of service of persons appointed to the Central Civil Service and posts under the administrative control of Administrator - the conditions of service of persons appointed to the Central Civil Services and posts in Groups A, B, C and D under the administrative control of the Administrator of Union Territory of Chandigarh shall, subject to any other provision made by the President in this behalf, be the same as the conditions of service of persons appointed to corresponding posts in Punjab Civil Services and shall be governed by the same rules and orders as are for the time being applicable to the category of persons. Provided that in the case of persons appointed to the services and post under the administration control of the Administrator Chandigarh, so long as they are drawing pay on the rates admissible to the corresponding categories of employees of the Government of Punjab, it shall be competent for the Administrator to revise their scales of pay from time to time so as to bring them at par with the scales of pay which may be sanctioned by the Government of Punjab from time to time to the corresponding categories of employees.

14. In view of notification dated 13.01.1992 / Exhibit 'MW1/A' Chandigarh Administration adopted Punjab Rules whereby pay scale was revised in the year 2009 applicable w.e.f. 01.01.2006.

15. Admittedly the arrears of difference of pay as per the revised pay scale for the period w.e.f. 01.01.2006 to 30.06.2009 are paid to the employees / Conductors of CTU.

16. As per letter No.4/7/09-2FP1/374 Government of Punjab, Department of Finance (Finance Personnel Branch - I) dated 12th August, 2009, issued by Under Secretary Finance to All Head of Departments, Commissioner of Division, Registrar Hon'ble High Court of Punjab & Haryana, District and Sessions Judges and Deputy Commissioners in the State, the House Rent Allowance to Government employees was revised from @15% of basic pay to @20% of basic pay for the employees of category 'B'. The Conductors of CTU, Chandigarh are employees falling in category 'B'. The increased rate of House Rent Allowance was made applicable for 1st August, 2009.

17. The aforesaid instructions of revised / increase house rent allowance were adopted by the Chandigarh Administration as per letter No.7000/1/2/F&PO(7)-2009/Chd. Admn., Finance Department (Accounts Branch) dated 19.08.2009 / Exhibit 'M1/3'.

18. As per letter dated 19.08.2009 / Exhibit 'MW1/3', in pursuance of the Government of India, Ministry of Home Affairs, New Delhi's notification dated 13.01.1992, read with Home Department letter No.8846-IH(4)-92/19636 dated 28.10.1992, the Administrator, U.T. Chandigarh adopted the Punjab Government letter dated 12.08.2009 in favour of employees of U.T. Administrator, Chandigarh, who are getting pay scales on Punjab Pattern and deputationists from the State of Punjab the same terms and conditions as mentioned in the said letter of the Government of Punjab.

19. In view of the aforesaid letter dated 19.08.2009 / Exhibit 'MW1/3', the Conductor (category Group - B) employees of CTU became entitle to the revised rate of House Rent Allowance @ 20% of Basic Pay w.e.f. 1st August, 2009.

20. The workers' union of employees of CTU, Chandigarh filed O.A.No.285-CH-2011 tilted Chandigarh Govt. Transport Workers' Union (Regd. & Recog.), Chandigarh and Others Versus U.O.I. and Others before the Central Administrative Tribunal, Chandigarh Branch seeking to issue direction to the respondents to consider and grant the members of applicant No.1 union, including applicant No.2 and 3, the proper house rent allowance @15% w.e.f. 01.01.2006 to 31.07.2009 on the revised pay scales instead of un-revised pay scale with arrears thereof along with interest @18% from the date the amount became due to the actual date of payment. The said O.A. No.285/CH-2011 was dismissed by the CAT, Chandigarh Bench vide its order dated 28.01.2014 / Exhibit 'MW1/2'. In para 5 of order dated 28.01.2014 / Exhibit 'MW1/2' finding has been given to the effect that :—

"One thing is very clear from the stand taken by the respondents that the State of Punjab has not revised HRA @ 20% w.e.f. 1.1.2006 to its own employees. In that view of the matter the applicants cannot claim that they should be put on a higher pedestal by payment of higher HRA for the relevant period which is not available even to the Punjab Government Employees."

21. Here in the present case learned represent for workers' union contended that the employees (Conductors) of CTU, are not claiming HRA @ 20% for the period w.e.f. 01.01.2006 to 30.06.2009, but are seeking difference of HRA w.e.f. 01.01.2006 to 30.06.2009 after recalculating the same as per the basic pay of increased revised pay scales in the same old percentage of 15% of basic pay. To support his contention learned representative for the workers' union referred the copy of order dated 04.03.2013 passed by Presiding officer, Industrial Tribunal and Labour Court, Union Territory Chandigarh / Exhibit 'W1', whereby the applications of the employees of CTU, seeking relief of difference of over time allowance for the period w.e.f. 01.01.2006 to 30.06.2009 on revision of pay scale w.e.f. 01.01.2006 was granted and resultantly the employees were granted the difference of over time allowance as calculated on the basis of revised basic pay. Learned representative for the workers' union further referred Exhibit 'W2' i.e. the order dated September 23, 2014 of Hon'ble High Court in LPA NO.891 of 2014 in CWP No.26454 of 2013 titled Union Territory Chandigarh and another Versus Presiding officer, Industrial Tribunal and Labour Court, U.T. Chandigarh wherein the order dated 04.03.2013 of the Presiding Officer, Industrial Tribunal and Labour Court, Union Territory Chandigarh and judgment dated 03.12.2013 of Hon'ble High Court in CWP No.26454 of 2013 were challenged. The said LPA No.891/2014 was dismissed.

22. Learned representative for the workers' union argued that employees of CTU are entitled to difference of HRA on revised pay scale for the period w.e.f. 01.01.2006 to 30.06.2009 in the same manner as they were held entitled to over time allowance vide order dated 04.03.2013 / Exhibit 'W1' and judgment dated September 23, 2014 / Exhibit 'W2'.

23. To my opinion the aforesaid argument of learned representative for the workers' union is devoid of merits because the notification of Punjab Government, adopted by the Chandigarh Administration revised the pay scales in the year 2009 with retrospective effect from 01.01.2006. The employees of CTU admittedly got the house rent allowance at the then existing rate of 15% of basic pay of relevant period i.e. 01.01.2006 to 30.06.2009. There is no policy decision of Government of Punjab which allowed difference of HRA at the old rate of 15% on the revised pay scale instead of unrevised pay scale for the previous period w.e.f. 01.01.2006 to 30.06.2009, whereas in the letter dated 12.08.2009, Government of Punjab it is made clear that decision of revised HRA shall be effective from 1st August, 2009.

24. The over time allowance falls within the definition of wages whereas the HRA does not fall within the definition of wages, consequently the employees of CTU are not entitled to difference of HRA @15% on the increased / revised pay scale of basic pay for the period w.e.f. 01.01.2006 to 31.07.2009. The HRA @ 15% of basic pay (unrevised) to which the employees were entitled as the relevant period for the period w.e.f. 01.01.2006 to 31.07.2009 is already paid.

25. Accordingly, this issue is decided against the workers' union and in favour of the management.

Issue No. 1 :

26. Onus to prove this issue is on the management. Learned Law Officer for the management argued that the workmen of CTU - Conductors have already sought the same relief of HRA at old rate of 15% on revised pay scales for the period w.e.f. 01.01.2006 to 31.07.2009 by filing O.A. 285/CH/2011 titled as Chandigarh Govt. Transport Workers' Union (Regd. & Recog.) Chandigarh and Others Versus Union of India and Others before the Hon'ble Central Administrative Tribunal, Chandigarh Bench, which was dismissed *vide* order dated 28.01.2014 / Exhibit 'MW1/2'. The workmen did not challenge the order dated 28.01.2014 before any higher court. Thus, order dated 28.01.2014 has become binding on the parties. The workmen / workers' union cannot re-agitate the same issue before this Court / Tribunal. Therefore, the present statement of claim is barred by the principle of *Res-judicata*.

27. On the other hand, learned representative for the workers' union failed to controvert the fact that O.A. No.285/CH/2011 was filed by the Chandigarh Govt. Transport Workers' Union through its General Secretary Shri Raj Kumar Sharma (applicant No.1) along with Avtar Singh - Conductor No.380 (applicant No.2) and Supinder Singh - Sub-inspector, Depot No.III, CTU, Chandigarh (applicant No. 3) against the Union of India through the Secretary Government of India, Ministry of Home Affairs, New Delhi (respondent No.1) and Chandigarh Administration, Chandigarh through Advisor to the Administrator (respondent No.2) under Section 19 of the Administrative Tribunal Act, 1985 seeking to issue directions to the respondents to consider and grant the members of applicant No.1 union, including applicant No.2 & 3, the proper house rent allowance @ 15% per annum w.e.f. 01.01.2006 to 31.07.2009 on the revised pay scales instead of unrevised pay scale with arrears thereof along with interest @18% per annum from the date the amount become due to the factual date of payment. The said O.A. No.285/CH/2011 thus dismissed *vide* order dated 28.01.2014 *vide* Exhibit 'MW1/2'.

28. The order dated 28.01.2014 / Exhibit 'MW1/2' is passed by the Hon'ble Central Administrative Tribunal, Chandigarh Bench. The Administrative Tribunal is distinguishable from the ordinary courts with regard to its jurisdiction and procedure. It exercises jurisdiction only in relation to the service matter of the parties covered by the Act. It is also free from the shackles of many of the technicalities of the ordinary courts. Thus, the principle of *Res-judicata* as articulated by Section 11 Code of Civil Procedure is not attracted.

29. Accordingly, this issue is decided against the management and in favour of the workers' union.

Relief :

30. In the light of findings on the issue No.2 above, this reference is declined and answered against the workers' union. Appropriate Government be informed. File be consigned to the record room.

Dated 18th August, 2022.

(Sd.) . . . ,
(JAGDEEP KAUR VIRK),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 3rd October, 2022

No. 13/1/9896-HII(2)-2022/14563.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 114/2018, dated 13.08.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, U.T., Chandigarh between :

MUNNA YADAV S/O SHRI FAUJDAR YADAV R/O HOUSE NO.2976, MAULI JAGRA,
CHANDIGARH (Workman)

AND

1. GROZ-BECKERT ASIA PRIVATE LIMITED, 133-135, PHASE - I, INDUSTRIAL AREA, CHANDIGARH THROUGH ITS FACTORY MANAGER.
2. HAWKS EYE SECURITY SERVICES PRIVATE LIMITED, S.C.O. NO.181-182, 1ST FLOOR, SECTOR 8-C, CHANDIGARH THROUGH ITS AUTHORISED SIGNATORY (Management)

AWARD

1. Sushil Kumar Rana, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*) wherein it is averred that the workman was appointed as Helper on 15.02.2010 by management No.1 and was assigned the work of hand straightening of knitting needles to improve straightness quality in Hand Straightening Department. The interview was conducted by its then Factory Manager namely Shri Manmohan Singh Dhaliwal. The workman was given token No. 07 at the time of his removal. It was informed to the workman that he would be deputed on regular work of the factory and his employment would be regular, though on papers it would be through contractor namely Hawks Eye Security Services Private Limited i.e. management No. 2. The daily timing of the workman was from 8:30 to 5:00 P.M. with weekly off. The work of the workman was controlled, supervised and assessed by management No.1's engineer namely Shri Satish Sharma. During some period, the work of the workman was controlled, supervised and assessed by its other engineer namely Shri Lalit Mohan Kalia. The personal file, record of leaves etc. of the workman was maintained by its Human Resource Department. The workman was being paid ₹12,000/- as gross salary including incentives & allowances and after deduction of provident fund, ESI and diet deduction, the workman was receiving salary of about ₹10,561/- per month at the time of his removal which was paid by management No. 1 through contractor. Management No.1 has paid ₹1,200/- on 18.10.2017 as Diwali festival sweets and have also paid ₹ 1,500/- in 2010 while celebrating its Golden Jubilee celebration. The workman was also enjoying yearly increment given by management No.1. The workman had not been given his salary of March 2018. The work & conduct of the workman while in service was unblemished and satisfactory. On 23.03.2018 the workman was called by Human Resource Officer of management No.1 namely Shri Ajay Patial, who directed the workman not to come on duty from the next day and forced him to sign on some blank papers but the workman refused for the same. The employees junior to the workman have been retained in service by the management in violation of provisions of law. The hand straightening process is still going on as the process is very crucial and is a regular work of the factory of management No.1. While terminating the services of the workman, neither prior notice was issued to the workman nor he was paid wages in lieu of notice period. The nature of work being done by the workman is regular process of manufacturing and quality improvement and without process of hand straightening, the product of management No.1 can neither be packed nor sold into the market. The workman had served in the factory of management No.1 for

continuous period from 15.02.2010 to 23.03.2018 and had completed 240 days in the twelve calendar months preceding his termination. Previously, the workman has submitted demand notice dated 08.06.2018 to the managements and before the Assistant Labour Commissioner-cum-Conciliation Officer, Sector 30, Chandigarh and both the managements submitted its reply dated 24.07.2018 and 05.10.2018 respectively. The conciliation proceedings failed and accordingly, the Conciliation Officer *vide* Memo No.6835 dated 12.10.2018 advised the workman to refer Section 2-A of the Industrial Disputes (Amendment) Act, 2010 and accordingly this statement of claim. During the pendency of the above conciliation proceedings, management No.2 to create illusion and false bonafide sent an ante dated letter dated 01.05.2018 actually sent on 13.06.2018 falsely stating that the Hand Straightening unit is closed at management No.1 factory. When the workman contacted management No.2, he was asked to work at some other place at salary of ₹ 9,000/-, which was much lower than his last paid salary of ₹12,000/-. The workman had made it clear to management No. 2 that he is entitled to the same wages as he was last paid and would not work for lesser amount. Prayer is made that an order may be issued to the managements to reinstate the service of the workman with continuity of service along with all the benefits under the provisions of law including full back wages.

2. On notice, management No.1 i.e. M/s Groz-Beckert Asia Private Limited appeared through its authorized representative and contested the statement of claim by filing written statement on 12.07.2019, wherein preliminary objections are raised on the ground that the claimant/person concerned was never in the employment of management No.1. There was no privity of contract between the concerned person and management No.1 as such no employer-employee relationship ever existed between them. The concerned person was employee of respondent No.2 (contractor), who is a licensed contractor under the Contract Labour (Regulation & Abolition) Act, 1970. The concerned person was getting his monthly wages from management No.2. Management No.2 is covered under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 and Employees State Insurance Act, 1948. The concerned person is also covered under EPF and ESI Codes of management No.2. Management No.1 had no role to play in the engagement and termination of services of the concerned person. The concerned person used to work as per instructions of Supervisor / Assistant Supervisor of management No.2 and his work & conduct was also supervised and controlled by management No.2. The services of the person concerned were regulated by the contractor in accordance with the provisions of the Contract Labour (Regulation & Abolition), Act, 1970 and Rules thereunder and not under the ID Act. Therefore, the concerned person has the remedy to file a claim under the Contract Labour (Regulation & Abolition), Act, 1970 and Rules thereunder but not under the ID Act. The services of the claimant / concerned person were not required by management No.2 and the concerned person was offered alternate employment by management No. 2, which offer was not availed by the person concerned.

3. On merits, it is stated that the concerned person was employee of management No. 2 and he was deployed to work as a Helper in the factory of management No.1 as contract labour. Being a contract labour of management No.2, the workman was not required any training as he was simply to work as a Helper. Since, the work in the Hand Straightening Department was subject to fluctuation, this activity was assigned to the contractor who used to supply contract labour as per requirement from time to time. The work of the workman was controlled, supervised and assessed by the Supervisor / Assistant Supervisor of management No.2. It is the management No. 2, who would confirm the rate of wages paid to the concerned person. Management No.1 has never paid any amount whatsoever directly to the concerned person. The concerned person was getting his monthly wages etc. from management No. 2. The concerned person was never called by Shri Ajay Patial and never directed the workman not to come on duty on the next day and never forced to sign on blank papers. Management No.1 was having surplus manpower and in that situation, management No.1 had two options i.e. to dispense with the services of the surplus permanent manpower or to adjust them in the Hand Straightening Department, which was outsourced to contract labour. Keeping in view the interest of the permanent workers, it was decided to do away with the contract labour so engaged in the Hand Straightening Department so management No.2 was asked to withdraw his contract labour. The Hand Straightening of

needles is not perennial in nature. The workman submitted demand notice dated 03.06.2018 for which the conciliation proceeding took place. Management No.1 and management No.2 submitted replies to the demand notice on 24.07.2018 and 05.10.2018 are respectively. The alternate employment was offered to the workman by management No.2 but the same was declined by the workman and consequently, the conciliation proceedings failed. Remaining averments of the claim statement are denied being wrong. Prayer is made that the present claim statement may be dismissed.

4. On notice, management No. 2 i.e. M/s Hawks Eye Security Services Private Limited appeared through its authorized representative and contested the claim of the workman by filing written statement on 07.10.2019, wherein preliminary objections are raised on the ground that management No.2 is an agency that engage workers on contract according to the requirement of the principal employer. The contract of management No.2 with management No.1 is a service contract of temporary nature, based on the volume of work generated by the company. Accordingly, the manpower was recruited on temporary / piece rate basis. Over a period of time, the work generated became lesser and lesser therefore management No. 2 had to slowly reduce the manpower according to the work requirements of the principal employer. Since the work requirement reduced with the passage of time and the answering management being concerned about the future of workers, arranged alternate employment for them where it sought to adjust them but the workman did not respond to this gesture and continued on the present job knowing well that the Hand Straightening work was coming to an end in the plant of principal employer. When the answering management started the service contract with management No.1, there were over 100 workers deployed in the work of straightening needles but as the order dwindled and the work reduced, the workers engaged by the answering management also reduced to about 20. Management No. 1 ultimately closed the hand straightening work of the needles and the workers including the present one became surplus to the requirement and he was offered alternative employment at other places where the answering management had work requirement but the workman chose not to go there and thus abandoned his employment. The answering management is still ready to offer them employment at other places on similar wages, if possible. The concerned workman is not competent to file the claim statement under the ID Act.

5. On merits, it is pleaded that the workman was a piece rate worker paid by the number of needles he retrieved. He worked in the factory of management No.1. Timings of the workman was from 8:30 A.M. to 5:00 P.M. with weekly off. The workman already paid for the month of March 2018. Since there was no work so the contract of the management automatically came to an end as the same was not renewed by management No.1. There is no termination of service. None of the provisions of the ID Act are violated. The workman raised a demand notice on 08.06.2018 despite the fact that the work at the plant of management No.1 had ended. The answering management filed its detailed reply before the ALC as well. Other averments of the statement of claim are denied being wrong. Prayer is made that the workman is not entitled to any relief whatsoever from the answering management and claim of the workman may be dismissed.

6. The workman filed replication to the written statement of management No.1, wherein the contents of written statement are denied as wrong & except the admitted facts of the statement of claim and the averments of the statement of claim are reiterated.

7. From the pleadings of the parties, following issues were framed *vide* order dated 26.02.2020 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether there exists no employer-employee relationship between management No.2 and workman ? OPM-1
3. Relief.

8. The workman examined himself as AW1 and tendered into evidence his affidavit Exhibit 'AW1/A' along with documents i.e. letter dated 01.05.2018 issued to the workman by the authorised signatory of M/s Hawks Eye Security Services Private Limited regarding re-location of his services vide Exhibit 'AW1/1' and envelop of registered post dated 13.06.2018 cover addressed to the workman vide Exhibit 'AW1/2'.

9. During the pendency of the present industrial dispute, the parties negotiated for compromise and on 07.07.2022 Shri Rohit Dogra - General Manager, M/s Hawks Eye Security Services Private Limited made a statement, which was recorded separately and reproduced as below :—

"Stated that on assurance of respondent/management No.1, I have agreed to pay legal dues to applicant/workman within one month from today. I will supply the amount/details of the pending dues to the applicant/workman within 15 days from today."

On the other hand, on 07.07.2022 the workman along with his representative made a statement, which was recorded separately and reproduced as below :—

"Stated that I have heard the statement of Sh. Rohit Dogra, GM got recorded by him today in this court. I agree with the same. After the receipt of the legal dues, I will withdraw the present claim application. The case may be kept pending for awaiting final compromise."

Thereafter the present industrial dispute was referred for determination to the Lok Adalat held on 13.08.2022. The workman got recorded his statement in the Lok Adalat, which is reproduced as below :—

"Stated that I have received agreed payment of my legal dues of Rs.61,997/- (Rs. Sixty One Thousand Nine Hundred Ninety Seven only) by way of demand draft No.082511 dated 08.08.2022 drawn on Union Bank of India towards full & final settlement of my claims and dues including the right of reinstatement, bonus, gratuity, and leave encashment. Photocopy of demand draft is Mark 'C'. Now I have no claim whatsoever against management No.1 & 2. The present industrial dispute may be disposed off accordingly."

10. Heard. In the view of the above statements, this industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

Dated 13th August, 2022.

(Sd.) . . . ,
(JAGDEEP KAUR VIRK),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 3rd October, 2022

No. 13/1/9898-HII(2)-2022/14565.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 121/2018, dated 13.08.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, U.T., Chandigarh between :

SUSHIL KUMAR RANA S/O SHRI BANWARI LAL RANA R/O HOUSE NO.1759, PHASE - II, RAMDARBAR, CHANDIGARH. (Workman)

AND

1. GROZ-BECKERT ASIA PRIVATE LIMITED, 133-135, PHASE - I, INDUSTRIAL AREA, CHANDIGARH THROUGH ITS FACTORY MANAGER.
2. HAWKS EYE SECURITY SERVICES PRIVATE LIMITED, S.C.O. NO.181-182, 1ST FLOOR, SECTOR 8-C, CHANDIGARH THROUGH ITS AUTHORISED SIGNATORY (Management)

AWARD

1. Sushil Kumar Rana, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*) wherein it is averred that the workman was appointed as Helper on 03.06.2010 by management No.1 and was assigned the work of hand straightening of knitting needles to improve straightness quality in Hand Straightening Department. The interview was conducted by its then Factory Manager namely Shri Manmohan Singh Dhaliwal. The workman was given token No.15 at the time of his removal. It was informed to the workman that he would be deputed on regular work of the factory and his employment would be regular, though on papers it would be through contractor namely Hawks Eye Security Services Private Limited i.e. management No. 2. The daily timing of the workman was from 8:30 to 5:00 P.M. with weekly off. The work of the workman was controlled, supervised and assessed by management No.1's engineer namely Shri Satish Sharma. During some period, the work of the workman was controlled, supervised and assessed by its other engineer namely Shri Lalit Mohan Kalia. The personal file, record of leaves etc. of the workman was maintained by its Human Resource Department. The workman was being paid ₹12,000/- as gross salary including incentives & allowances and after deduction of provident fund, ESI and diet deduction, the workman was receiving salary of about ₹10,355/- per month at the time of his removal which was paid by management No.1 through contractor. Management No.1 has paid ₹ 1,200/- on 18.10.2017 as Diwali festival sweets and have also paid ₹1,500/- in 2010 while celebrating its Golden Jubilee celebration. The workman was also enjoying yearly increment given by management No.1. The workman had not been given his salary of May 2018 on time and the same was paid on 06.07.2018 after filing of demand notice. The work & conduct of the workman while in service was unblemished and satisfactory. On 02.04.2018 the workman was called by Human Resource Officer of management No.1 namely Shri Ajay Patial, who directed the workman not to come on duty from the next day and forced him to sign on some blank papers but the workman refused for the same. The employees junior to the workman have been retained in service by the management in violation of provisions of law. The hand straightening process is still going on as the process is very crucial and is a regular work of the factory of management No.1. While terminating the services of the workman, neither prior notice was issued to the workman nor he was paid wages in lieu of notice period. The nature of work being done by the workman is regular process of manufacturing and quality improvement and without process of hand straightening, the product of management No.1 can neither be packed nor sold into the market. The workman had served in the factory of management No.1 for continuous period from 03.06.2010 to 02.04.2018 and had completed 240 days in the twelve calendar months preceding his termination. Previously, the workman has submitted demand notice dated 08.06.2018 to the managements and before the Assistant Labour Commissioner-cum-Conciliation Officer, Sector 30, Chandigarh and both the

managements submitted its reply dated 24.07.2018 and 05.10.2018 respectively. The conciliation proceedings failed and accordingly, the Conciliation Officer *vide* Memo No.6827 dated 12.10.2018 advised the workman to refer Section 2-A of the Industrial Disputes (Amendment) Act, 2010 and accordingly this statement of claim. During the pendency of the above conciliation proceedings, management No.2 to create illusion and false bonafide sent an ante dated letter dated 13.06.2018 falsely stating that the Hand Straightening unit is closed at management No.1 factory. When the workman contacted management No.2, he was asked to work at some other place at salary of ₹9,000/-, which was much lower than his last paid salary of ₹12,000/-. The workman had made it clear to management No. 2 that he is entitled to the same wages as he was last paid and would not work for lesser amount. Prayer is made that an order may be issued to the managements to reinstate the service of the workman with continuity of service along with all the benefits under the provisions of law including full back wages.

2. On notice, management No.1 i.e. M/s Groz-Beckert Asia Private Limited appeared through its authorized representative and contested the statement of claim by filing written statement on 12.07.2019, wherein preliminary objections are raised on the ground that the claimant/person concerned was never in the employment of management No.1. There was no privity of contract between the concerned person and management No.1 as such no employer-employee relationship ever existed between them. The concerned person was employee of respondent No.2 (contractor), who is a licensed contractor under the Contract Labour (Regulation & Abolition) Act, 1970. The concerned person was getting his monthly wages from management No. 2. Management No. 2 is covered under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 and Employees State Insurance Act, 1948. The concerned person is also covered under EPF and ESI Codes of management No. 2. Management No.1 had no role to play in the engagement and termination of services of the concerned person. The concerned person used to work as per instructions of Supervisor / Assistant Supervisor of management No.2 and his work & conduct was also supervised and controlled by management No.2. The services of the person concerned were regulated by the contractor in accordance with the provisions of the Contract Labour (Regulation & Abolition), Act, 1970 and Rules thereunder and not under the ID Act. Therefore, the concerned person has the remedy to file a claim under the Contract Labour (Regulation & Abolition), Act, 1970 and Rules thereunder but not under the ID Act. The services of the claimant / concerned person were not required by management No.2 and the concerned person was offered alternate employment by management No. 2, which offer was not availed by the person concerned.

3. On merits, it is stated that the concerned person was employee of management No.2 and he was deployed to work as a Helper in the factory of management No.1 as contract labour. Being a contract labour of management No. 2, the workman was not required any training as he was simply to work as a Helper. Since, the work in the Hand Straightening Department was subject to fluctuation, this activity was assigned to the contractor who used to supply contract labour as per requirement from time to time. The work of the workman was controlled, supervised and assessed by the Supervisor / Assistant Supervisor of management No.2. It is the management No.2, who would confirm the rate of wages paid to the concerned person. Management No.1 has never paid any amount whatsoever directly to the concerned person. The concerned person was getting his monthly wages etc. from management No. 2. The concerned person was never called by Shri Ajay Patial and never directed the workman not to come on duty on the next day and never forced to sign on blank papers. Management No.1 was having surplus manpower and in that situation, management No.1 had two options i.e. to dispense with the services of the surplus permanent manpower or to adjust them in the Hand Straightening Department, which was outsourced to contract labour. Keeping in view the interest of the permanent workers, it was decided to do away with the contract labour so engaged in the Hand Straightening Department so management No.2 was asked to withdraw his contract labour. The Hand Straightening of needles is not perennial in nature. The workman submitted demand notice dated 03.06.2018 for which the conciliation proceeding took place. Management No.1 and management No.2 submitted replies to the demand notice on 24.07.2018 and 05.10.2018 are respectively. The alternate employment was offered to the workman by management No.2 but the same was declined by the workman and consequently, the conciliation proceedings failed. Remaining averments of the claim statement are denied being wrong. Prayer is made that the present claim statement may be dismissed.

4. On notice, management No.2 i.e. M/s Hawks Eye Security Services Private Limited appeared through its authorized representative and contested the claim of the workman by filing written statement

on 07.10.2019, wherein preliminary objections are raised on the ground that management No.2 is an agency that engage workers on contract according to the requirement of the principal employer. The contract of management No.2 with management No.1 is a service contract of temporary nature, based on the volume of work generated by the company. Accordingly, the manpower was recruited on temporary / piece rate basis. Over a period of time, the work generated became lesser and lesser therefore management No.2 had to slowly reduce the manpower according to the work requirements of the principal employer. Since the work requirement reduced with the passage of time and the answering management being concerned about the future of workers, arranged alternate employment for them where it sought to adjust them but the workman did not respond to this gesture and continued on the present job knowing well that the Hand Straightening work was coming to an end in the plant of principal employer. When the answering management started the service contract with management No.1, there were over 100 workers deployed in the work of straightening needles but as the order dwindled and the work reduced, the workers engaged by the answering management also reduced to about 20. Management No.1 ultimately closed the hand straightening work of the needles and the workers including the present one became surplus to the requirement and he was offered alternative employment at other places where the answering management had work requirement but the workman chose not to go there and thus abandoned his employment. The answering management is still ready to offer them employment at other places on similar wages, if possible. The concerned workman is not competent to file the claim statement under the ID Act.

5. On merits, it is pleaded that the workman was a piece rate worker paid by the number of needles he retrieved. He worked in the factory of management No.1. Timings of the workman was from 8:30 A.M. to 5:00 P.M. with weekly off. The workman already paid for the month of March 2018. Since there was no work so the contract of the management automatically came to an end as the same was not renewed by management No.1. There is no termination of service. None of the provisions of the ID Act are violated. The workman raised a demand notice on 08.06.2018 despite the fact that the work at the plant of management No.1 had ended. The answering management filed its detailed reply before the ALC as well. Other averments of the statement of claim are denied being wrong. Prayer is made that the workman is not entitled to any relief whatsoever from the answering management and claim of the workman may be dismissed.

6. The workman filed replication to the written statement of management No.1, wherein the contents of written statement are denied as wrong & except the admitted facts of the statement of claim and the averments of the statement of claim are reiterated.

7. From the pleadings of the parties, following issues were framed *vide* order dated 26.02.2020 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether there exists no employer-employee relationship between management No. 2 and workman ? OPM-1
3. Relief.

8. The workman examined himself as AW1 and tendered into evidence his affidavit Exhibit 'AW1/A' along with documents i.e. letter dated 02.05.2018 issued to the workman by the authorised signatory of M/s Hawks Eye Security Services Private Limited regarding re-location of his services *vide* Exhibit 'W1' and envelop of registered post dated 13.06.2018 cover addressed to the workman *vide* Exhibit 'W2'.

9. During the pendency of the present industrial dispute, the parties negotiated for compromise and on 07.07.2022 Shri Rohit Dogra - General Manager, M/s Hawks Eye Security Services Private Limited made a statement, which was recorded separately and reproduced as below :—

"Stated that on assurance of respondent/management No. 1, I have agreed to pay legal dues to applicant/workman within one month from today. I will supply the amount/details of the pending dues to the applicant/workman within 15 days from today."

On the other hand, on 07.07.2022 the workman along with his representative made a statement, which was recorded separately and reproduced as below :—

"Stated that I have heard the statement of Sh. Rohit Dogra, GM got recorded by him today in this court. I agree with the same. After the receipt of the legal dues, I will withdraw the present claim application. The case may be kept pending for awaiting final compromise."

Thereafter the present industrial dispute was referred for determination to the Lok Adalat held on 13.08.2022. The workman got recorded his statement in the Lok Adalat, which is reproduced as below:-

"Stated that I have received agreed payment of my legal dues of Rs.78,428/- (Rs. Seventy Eight Thousand Four Hundred Twenty Eight only) by way of demand draft No.082510 dated 08.08.2022 drawn on Union Bank of India towards full & final settlement of my claims and dues including the right of reinstatement, bonus, gratuity, and leave encashment. Photocopy of demand draft is Mark 'C'. Now I have no claim whatsoever against management No.1 & 2. The present industrial dispute may be disposed off accordingly."

10. Heard. In the view of the above statements, this industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

Dated 13th August, 2022.

(JAGDEEP KAUR VIRK),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 3rd October, 2022

No. 13/1/9897-HII(2)-2022/14567.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 119/2018, dated 13.08.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, U.T., Chandigarh between :

RAVI SHANKAR S/O SHRI LALU PARSAD R/O HOUSE NO.1079-C, SMALL FLATS, DHANAS
CHANDIGARH (Workman)

AND

1. GROZ-BECKERT ASIA PRIVATE LIMITED, 133-135, PHASE - I, INDUSTRIAL AREA, CHANDIGARH THROUGH ITS FACTORY MANAGER.
2. HAWKS EYE SECURITY SERVICES PRIVATE LIMITED, S.C.O. NO.181-182, 1ST FLOOR, SECTOR 8-C, CHANDIGARH THROUGH ITS AUTHORISED SIGNATORY (Management)

AWARD

1. Sushil Kumar Rana, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*) wherein it is averred that the workman was appointed as Helper on 01.07.2010 by management No.1 and was assigned the work of hand straightening of knitting needles to improve straightness quality in Hand Straightening Department. The interview was conducted by its then Factory Manager namely Shri Manmohan Singh Dhaliwal. The workman was given token No.41 at the time of his removal. It was informed to the workman that he would be deputed on regular work of the

factory and his employment would be regular, though on papers it would be through contractor namely Hawks Eye Security Services Private Limited i.e. management No. 2. The daily timing of the workman was from 8:30 to 5:00 P.M. with weekly off. The work of the workman was controlled, supervised and assessed by management No.1's engineer namely Shri Satish Sharma. During some period, the work of the workman was controlled, supervised and assessed by its other engineer namely Shri Lalit Mohan Kalia. The personal file, record of leaves etc. of the workman was maintained by its Human Resource Department. The workman was being paid ₹12,000/- as gross salary including incentives & allowances and after deduction of provident fund, ESI and diet deduction, the workman was receiving salary of about ₹ 10,366/- per month at the time of his removal which was paid by management No.1 through contractor. Management No.1 has paid ₹1,200/- on 18.10.2017 as Diwali festival sweets and have also paid ₹ 1,500/- in 2010 while celebrating its Golden Jubilee celebration. The workman was also enjoying yearly increment given by management No.1. The workman had not been given his salary of March 2018. The work & conduct of the workman while in service was unblemished and satisfactory. On 23.03.2018 the workman was called by Human Resource Officer of management No.1 namely Shri Ajay Patial, who directed the workman not to come on duty from the next day and forced him to sign on some blank papers but the workman refused for the same. The employees junior to the workman have been retained in service by the management in violation of provisions of law. The hand straightening process is still going on as the process is very crucial and is a regular work of the factory of management No.1. While terminating the services of the workman, neither prior notice was issued to the workman nor he was paid wages in lieu of notice period. The nature of work being done by the workman is regular process of manufacturing and quality improvement and without process of hand straightening, the product of management No.1 can neither be packed nor sold into the market. The workman had served in the factory of management No.1 for continuous period from 01.07.2010 to 23.03.2018 and had completed 240 days in the twelve calendar months preceding his termination. Previously, the workman has submitted demand notice dated 08.06.2018 to the managements and before the Assistant Labour Commissioner-cum-Conciliation Officer, Sector 30, Chandigarh and both the managements submitted its reply dated 24.07.2018 and 05.10.2018 respectively. The conciliation proceedings failed and accordingly, the Conciliation Officer *vide* Memo No. 6839 dated 12.10.2018 advised the workman to refer Section 2-A of the Industrial Disputes (Amendment) Act, 2010 and accordingly this statement of claim. During the pendency of the above conciliation proceedings, management No.2 to create illusion and false bonafide sent an ante dated letter dated 01.05.2018 actually sent on 13.06.2018 falsely stating that the Hand Straightening unit is closed at management No.1 factory. When the workman contacted management No.2, he was asked to work at some other place at salary of ₹ 9,000/-, which was much lower than his last paid salary of ₹12,000/-. The workman had made it clear to management No. 2 that he is entitled to the same wages as he was last paid and would not work for lesser amount. Prayer is made that an order may be issued to the managements to reinstate the service of the workman with continuity of service along with all the benefits under the provisions of law including full back wages.

2. On notice, management No.1 i.e. M/s Groz-Beckert Asia Private Limited appeared through its authorized representative and contested the statement of claim by filing written statement on 12.07.2019, wherein preliminary objections are raised on the ground that the claimant/person concerned was never in the employment of management No.1. There was no privity of contract between the concerned person and management No.1 as such no employer-employee relationship ever existed between them. The concerned person was employee of respondent No.2 (contractor), who is a licensed contractor under the Contract Labour (Regulation & Abolition) Act, 1970. The concerned person was getting his monthly wages from management No.2. Management No.2 is covered under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 and Employees State Insurance Act, 1948. The concerned person is also covered under EPF and ESI Codes of management No.2. Management No.1 had no role to play in the engagement and termination of services of the concerned person. The concerned person used to work as per instructions of Supervisor / Assistant Supervisor of management No.2 and his work & conduct was also supervised and controlled by management No.2. The services of the person concerned were regulated by the contractor in accordance with the provisions of the Contract Labour (Regulation & Abolition), Act, 1970 and Rules thereunder and not under the ID Act. Therefore, the concerned person has the remedy to file a claim under the Contract Labour (Regulation & Abolition), Act, 1970 and Rules thereunder but not under the ID Act. The services of the claimant / concerned person were not required by management No.2 and the concerned person was offered

alternate employment by management No. 2, which offer was not availed by the person concerned.

3. On merits, it is stated that the concerned person was employee of management No.2 and he was deployed to work as a Helper in the factory of management No.1 as contract labour. Being a contract labour of management No.2, the workman was not required any training as he was simply to work as a Helper. Since, the work in the Hand Straightening Department was subject to fluctuation, this activity was assigned to the contractor who used to supply contract labour as per requirement from time to time. The work of the workman was controlled, supervised and assessed by the Supervisor / Assistant Supervisor of management No.2. It is the management No. 2, who would confirm the rate of wages paid to the concerned person. Management No.1 has never paid any amount whatsoever directly to the concerned person. The concerned person was getting his monthly wages etc. from management No.2. The concerned person was never called by Shri Ajay Patial and never directed the workman not to come on duty on the next day and never forced to sign on blank papers. Management No.1 was having surplus manpower and in that situation, management No.1 had two options i.e. to dispense with the services of the surplus permanent manpower or to adjust them in the Hand Straightening Department, which was outsourced to contract labour. Keeping in view the interest of the permanent workers, it was decided to do away with the contract labour so engaged in the Hand Straightening Department so management No. 2 was asked to withdraw his contract labour. The Hand Straightening of needles is not perennial in nature. The workman submitted demand notice dated 03.06.2018 for which the conciliation proceeding took place. Management No.1 and management No. 2 submitted replies to the demand notice on 24.07.2018 and 05.10.2018 are respectively. The alternate employment was offered to the workman by management No.2 but the same was declined by the workman and consequently, the conciliation proceedings failed. Remaining averments of the claim statement are denied being wrong. Prayer is made that the present claim statement may be dismissed.

4. On notice, management No. 2 i.e. M/s Hawks Eye Security Services Private Limited appeared through its authorized representative and contested the claim of the workman by filing written statement on 07.10.2019, wherein preliminary objections are raised on the ground that management No.2 is an agency that engage workers on contract according to the requirement of the principal employer. The contract of management No.2 with management No.1 is a service contract of temporary nature, based on the volume of work generated by the company. Accordingly, the manpower was recruited on temporary / piece rate basis. Over a period of time, the work generated became lesser and lesser therefore management No.2 had to slowly reduce the manpower according to the work requirements of the principal employer. Since the work requirement reduced with the passage of time and the answering management being concerned about the future of workers, arranged alternate employment for them where it sought to adjust them but the workman did not respond to this gesture and continued on the present job knowing well that the Hand Straightening work was coming to an end in the plant of principal employer. When the answering management started the service contract with management No.1, there were over 100 workers deployed in the work of straightening needles but as the order dwindled and the work reduced, the workers engaged by the answering management also reduced to about 20. Management No.1 ultimately closed the hand straightening work of the needles and the workers including the present one became surplus to the requirement and he was offered alternative employment at other places where the answering management had work requirement but the workman chose not to go there and thus abandoned his employment. The answering management is still ready to offer them employment at other places on similar wages, if possible. The concerned workman is not competent to file the claim statement under the ID Act.

5. On merits, it is pleaded that the workman was a piece rate worker paid by the number of needles he retrieved. He worked in the factory of management No.1. Timings of the workman was from 8:30 A.M. to 5:00 P.M. with weekly off. The workman already paid for the month of March 2018. Since there was no work so the contract of the management automatically came to an end as the same was not renewed by management No.1. There is no termination of service. None of the provisions of the ID Act are violated. The workman raised a demand notice on 08.06.2018 despite the fact that the work at the plant of management No.1 had ended. The answering management filed its detailed reply before the ALC as well. Other averments of the statement of claim are denied being wrong. Prayer is made that the workman is not entitled to any relief whatsoever from the answering management and claim of the workman may be dismissed.

6. The workman filed replication to the written statement of management No.1, wherein the contents

of written statement are denied as wrong & except the admitted facts of the statement of claim and the averments of the statement of claim are reiterated.

7. From the pleadings of the parties, following issues were framed vide order dated 26.02.2020 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether there exists no employer-employee relationship between management No.2 and workman ? OPM-1
3. Relief.

8. The workman examined himself as AW1 and tendered into evidence his affidavit Exhibit 'AW1/A' along with documents i.e. letter dated 01.05.2018 issued to the workman by the authorised signatory of M/s Hawks Eye Security Services Private Limited regarding re-location of his services vide Exhibit 'W1' and envelop of registered post dated 13.06.2018 cover addressed to the workman vide Exhibit 'W2'.

9. During the pendency of the present industrial dispute, the parties negotiated for compromise and on 07.07.2022 Shri Rohit Dogra - General Manager, M/s Hawks Eye Security Services Private Limited made a statement, which was recorded separately and reproduced as below :—

"Stated that on assurance of respondent/management No.1, I have agreed to pay legal dues to applicant/workman within one month from today. I will supply the amount/details of the pending dues to the applicant/workman within 15 days from today."

On the other hand, on 07.07.2022 the workman along with his representative made a statement, which was recorded separately and reproduced as below :—

"Stated that I have heard the statement of Sh. Rohit Dogra, GM got recorded by him today in this court. I agree with the same. After the receipt of the legal dues, I will withdraw the present claim application. The case may be kept pending for awaiting final compromise."

Thereafter the present industrial dispute was referred for determination to the Lok Adalat held on 13.08.2022. The workman got recorded his statement in the Lok Adalat, which is reproduced as below :—

"Stated that I have received agreed payment of my legal dues of Rs.60,592/- (Rs. Sixty Thousand Five Hundred Ninety Two only) by way of demand draft No.082513 dated 08.08.2022 drawn on Union Bank of India towards full & final settlement of my claims and dues including the right of reinstatement, bonus, gratuity, and leave encashment. Photocopy of demand draft is Mark 'C'. Now I have no claim whatsoever against management No. 1 & 2. The present industrial dispute may be disposed off accordingly."

10. Heard. In the view of the above statements, this industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

Dated 13th August, 2022.

(JAGDEEP KAUR VIRK),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Anil Kumar, S/o Kali Charan, R/o # 21, Block B, CSIO Colony, Sector 30-C, Chandigarh. I have changed my name from Anil Kumar to Anil.

[839-1]

I, Barinder Singh, S/o Late Hari Singh, R/o 2439/1, MWT, Manimajra, Chandigarh, have changed my name from Barinder Singh to Varinder Singh.

[840-1]

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